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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,326	08/30/2001	Martin Gleave	UBC.P-020-2	2324
21121	7590	04/04/2006	EXAMINER	
OPPEDAHL AND LARSON LLP			VIVLEMORE, TRACY ANN	
P O BOX 5068			ART UNIT	
DILLON, CO 80435-5068			PAPER NUMBER	

1635

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,326

Applicant(s)

GLEAVE ET AL.

Examiner

Tracy Vivlemore

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 12-15, 19 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 19 and 23 is/are rejected.
- 7) ☒ Claim(s) 12-15 and 24-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Any rejection not reiterated in this Action is withdrawn.

Response to arguments: Double Patenting

Claims 1 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,900,187 for the reasons set forth in the office action mailed July 28, 2005. It is noted that the previous office action inadvertently omitted claim 1 from this rejection. Applicant argues that the issuance of the '187 patent without an office action demonstrates it is patentably distinct from the published disclosure of the unmodified sequence in WO 00/49937. This argument is not persuasive because no restriction has been made in the instant application or in that of the '187 patent asserting that the unmodified and modified sequences were patentably distinct. The instant application provides a disclosure of the nucleotide sequence of SEQ ID NO: 4, the identical nucleotide sequence claimed in the '187 patent.

Response to arguments: Claim Rejections - 35 USC § 103

Claims 1 and 23 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. in view of Baracchini et al. for the reasons set forth in the office action mailed July 28, 2005.

Applicant traverses the 103 rejection by stating that the term oligonucleotide has an established meaning in the art of being short nucleotide sequences and that the oligonucleotides disclosed in the instant application have lengths of 18-23 bases. This argument is not persuasive because the instant specification does not provide an explicit definition that excludes sequences of a particular length. Similarly, the definitions of oligonucleotide in the art are not consistent in citing or excluding particular lengths. A sequence of 1300 nucleotides could be considered short when compared to a gene of 6000 nucleotides since defining an oligonucleotide as a short nucleotide sequence uses relative terminology. Additionally, the instant claims recite an antisense oligonucleotide that has the sequence given in SEQ ID NO: 4. The word "has" is considered to be open language equivalent to the transitional phrase comprising, thus the claims do not exclude sequences the size of the cDNA.

Applicant additionally traverses the rejection by stating that Wong et al. do not provide a functional role for TRPM-2 and thus it is not a target for therapy. This argument is not persuasive because Wong et al. teach that TRPM-2 expression is associated with numerous disorders, including Alzheimer's, epilepsy and retinitis pigmentosa and the person of ordinary skill in the art would be motivated to make a composition to inhibit the expression of the gene in order to identify the role of that gene in the disease.

Allowable Subject Matter

SEQ ID NOS: 4 and 13 are free of the prior art searched.

Claims 12-15 and 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Vivlemore whose telephone number is 571-272-2914. The examiner can normally be reached on Mon-Fri 8:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on 571-272-0811. The central FAX Number is 571-273-8300.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system

Art Unit: 1635

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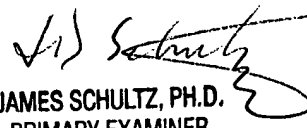
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Tracy Vivlemore
Examiner
Art Unit 1635

TV
March 31, 2006


JAMES SCHULTZ, PH.D.
PRIMARY EXAMINER